

Message Text

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DRAFTED BY OES/NET/EIC: D H COOPER
APPROVED BY OES/NET: L V NOSENZO
NEA/INS: P LANDE
S/AS: R KELLEY
T/D: J NYE
PM/NPP: G OPLINGER
ACDA: C VAN DOREN
L/OES: R BETTAUER

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O P 072310Z APR 78
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI IMMEDIATE
INFO AMCONSUL BOMBAY PRIORITY

C O N F I D E N T I A L STATE 090251

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E.O. 11652:GDS

TAGS: TECH, ENRG, IN

SUBJECT: INDIAN NUCLEAR ASSURANCES

REFERENCE: NEW DELHI 7675

1. DURING DISCUSSION WITH DEPUTY ASSISTANT SECRETARY
NOSENZO ON APRIL 6, AN NRC COMMISSIONER EXPRESSED AS KEY
CONCERN, RE APPROVAL OF XSNM-1060, THE APPLICABILITY OF
EXISTING NO-NUCLEAR EXPLOSIVE AND SAFEGUARDS ASSURANCES ON
U.S. NUCLEAR FUEL SUPPLIED FOR TARAPUR IN THE EVENT INDIA
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FAILS TO MEET FULL-SCOPE SAFEGUARDS REQUIREMENT OF
NUCLEAR NON-PROLIFERATION ACT OF 1978 (P.L. 95-242) IN THE
ALLOTTED TIME AND THE U.S., AS A RESULT, TERMINATES FURTHER
SUPPLY. IN RESPONSE, NOSENZO PROVIDED NRC WITH VERBAL OUT-
LINE OF INDIAN ASSURANCES RECEIVED TO DATE AND ON APRIL 7
FORWARDED CONFIDENTIAL WRITTEN EXECUTIVE BRANCH ANALYSIS
ADDRESSING THESE CONCERNS AND FURTHER CLARIFYING THE BASIS

FOR THE EXECUTIVE BRANCH'S EARLIER AFFIRMATIVE RECOMMENDATION TO NRC ON XSNM-1060. THE APRIL 7 ANALYSIS MAKES SPECIFIC REFERENCE TO A NUMBER OF PREVIOUS INDIAN COMMITMENTS AND ASSURANCES AS OUTLINED BELOW:

A. THE WRITTEN INDIAN ASSURANCE RECEIVED IN 1974 IN RESPONSE TO A U.S. REQUEST FOR CLARIFICATION OF THE PEACEFUL USES GUARANTEE UNDER THE U.S.-INDIA AGREEMENT THAT "... THE SPECIAL NUCLEAR MATERIAL THAT HAS BEEN OR IS HEREAFTER MADE AVAILABLE FOR, OR USED, OR PRODUCED IN THE TARAPUR ATOMIC POWER STATION LOCATED AT TARAPUR WILL BE DEVOTED EXCLUSIVELY TO THE NEEDS OF THAT STATION UNLESS OUR TWO GOVERNMENTS HEREAFTER SPECIFICALLY AGREE THAT SUCH MATERIAL BE USED FOR OTHER PURPOSES".

B. PRIME MINISTER DESAI'S MAY 1977 CONFIRMATION (REFTEL) OF THE FOLLOWING IN CONNECTION WITH CONTINUED TARAPUR SUPPLY (I.E., IN CONNECTION WITH XSNM-845), WHICH WAS WITHOUT QUALIFICATION WITH REGARD TO TERMINATION OF THE U.S. INDIA AGREEMENT FOR COOPERATION:

(1) UNDER THE TERMS OF THE AGREEMENT FOR COOPERATION BETWEEN INDIA AND THE UNITED STATES, INDIA IS COMMITTED TO APPLY IAEA SAFEGUARDS FOR ALL FUEL WHICH HAS BEEN OR MAY BE SUPPLIED BY THE U.S. FOR THE TARAPUR REACTORS.

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(2) INDIA WILL HONOR ITS COMMITMENT NOT TO USE MATERIAL SUPPLIED BY THE U.S. FOR TARAPUR IN A NUCLEAR EXPLOSIVE DEVICE.

C. INDIAN PRESIDENT REDDY'S POLICY STATEMENT TO PARLIAMENT ON FEBRUARY 20, 1978, THAT: "WE HAVE REITERATED OUR SOLEMN RESOLVE TO USE NUCLEAR ENERGY ONLY FOR PEACEFUL PURPOSES AND HAVE ALSO MADE IT CLEAR THAT WE WILL UNILATERALLY DESIST FROM MAKING NUCLEAR TESTS;.

2. THE APRIL 7 ANALYSIS MAKES PASSING REFERENCE TO SEVERAL ADDITIONAL RELATED GOI STATEMENTS AND INDICATES THAT, ON THE BASIS OF THE ASSURANCE PROVIDED TO DATE, THE EXECUTIVE BRANCH CONSIDERS THAT INDIA IS COMMITTED TO MAINTAINING SAFEGUARDS ON U.S. SUPPLIED NUCLEAR MATERIAL AND ON SPECIAL NUCLEAR MATERIAL PRODUCED THROUGH ITS USE, AND NOT TO USING ANY SUCH MATERIAL FOR NUCLEAR EXPLOSIVE PURPOSES, REGARDLESS OF THE DURATION OF THE AGREEMENT FOR COOPERATION, OR WHETHER IT IS TERMINATED OR SUSPENDED FOR ANY REASON. THE ANALYSIS GOES ON TO STATE THAT "THE EXECUTIVE BRANCH WOULD CONSIDER ANY ABROGATION OF THIS COMMITMENT TO BE A MATERIAL VIOLATION OF THE TERMS UNDER

WHICH SUCH MATERIAL WAS SUPPLIED AS PROVIDED IN SECTION 129 (2) (A) OF THE ATOMIC ENERGY ACT."

3. NRC WAS SCHEDULED TO MAKE A DECISION ON XSNM-1060 ON APRIL 7. WE ANTICIPATED A SPLIT 2-2 VOTE, WHICH MIGHT HAVE RESULTED IN REFERRAL TO PRESIDENT WHO COULD APPROVE EXPORT BY EXECUTIVE ORDER. HOWEVER, PROCEDURES REQUIRE THAT ANY SUCH PRESIDENTIAL DETERMINATION BE SUBMITTED TO

CONGRESS FOR 60 DAYS CONTINUOUS SESSION, DURING WHICH TIME CONGRESS COULD PREVENT EXPORT BY CONCURRENT RESOLUTION.

4. IN LIGHT OF EXECUTIVE BRANCH ANALYSES, NRC HAS DELAYED
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DECISION. (WE EXPECT THIS DECISION WITHIN A WEEK OR SO.) WHILE THIS IS HOPEFUL SIGN, WE ANTICIPATE THAT ONE OR MORE COMMISSIONERS WILL DESIRE INDIAN CONFIRMATION OF ABOVE INTERPRETATION.

5. EMBASSY THEREFORE REQUESTED TO APPROACH GOI AT AN APPROPRIATELY HIGH POLITICAL LEVEL, ON AN URGENT BASIS, TO SEEK CONFIRMATION FROM INDIA OF OUR UNDERSTANDING THAT ASSURANCES PROVIDED 1) AGAINST ANY USE BY INDIA OF U.S. SUPPLIED NUCLEAR MATERIAL, OR SPECIAL NUCLEAR MATERIAL PRODUCED THEREFROM, FOR NUCLEAR EXPLOSIVE PURPOSES AND 2) FOR MAINTENANCE OF IAEA SAFEGUARDS ON ALL SUCH MATERIAL ARE NOT LIMITED BY THE DURATION OR STATUS OF EITHER THE U.S.-INDIA AGREEMENT FOR COOPERATION, OR OF THE RELATED U.S./INDIA/IAEA SAFEGUARDS AGREEMENT. (FOR PURPOSE OF CLARITY, EMBASSY SHOULD USE THE EXACT LANGUAGE OF THIS PARAGRAPH IN SEEKING THE CONFIRMATION.)

6. IN REQUESTING ABOVE CONFIRMATION, EMBASSY MAY WISH TO POINT OUT THAT, IN THE DEPARTMENT'S JUDGMENT, IT IS UNLIKELY THAT NRC WILL APPROVE XSNM-1060 IN THE ABSENCE OF SUCH SPECIFIC CONFIRMATION. VANCE

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